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SUPPLEMENTARY EXTRADITION CONVENTION WITH THE KINGDOM OF SWEDEN

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SUPPLEMENTARY CONVENTION ON EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF SWEDEN, SIGNED IN STOCKHOLM ON MARCH 14, 1983

MAY 25, 1983.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 24, 1983.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Supplementary Convention on Extradition between the United States of America and the Kingdom of Sweden, signed in Stockholm on March 14, 1983.

It is my desire that the supplementary convention transmitted herewith be considered in place of the Supplementary Extradition Convention with Sweden signed in Washington on May 27, 1981, which was transmitted to the Senate with my message dated July 28, 1981, and which is now pending in the Committee on Foreign Relations (Treaty Doc. No. 97–15). I desire, therefore, to withdraw from the Senate the supplementary convention signed in 1981.

I also transmit, for the information of the Senate, the report of the Secretary of State with respect to the supplementary convention transmitted herewith. The reasons for the substitution mentioned above are explained in that report.

I recommend that the Senate give early and favorable consideration to the supplementary convention.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 12, 1983.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Supplementary Extradition Convention between the United States and Sweden signed in Stockholm on March 14, 1983. I recommend that the supplementary convention be transmitted to the Senate for its advice and consent to ratification.

The supplementary convention would replace the Supplementary Extradition Convention with Sweden signed in Washington on May 27, 1981, which was transmitted to the Senate with a message from the President dated July 28, 1981, and which is now pending in the Committee on Foreign Relations. The reason for the proposed substitution is set forth below.

The United States has rarely been successful in obtaining the extradition of fugitives from Sweden. This was thought to be largely attributable to the fact that the current convention, as interpreted by the Swedish Supreme Court, requires that the evidence submitted in support of an extradition request satisfy an inappropriately rigorous standard of proof. Therefore, the supplementary convention signed in 1981 substituted as the standard of proof the "probable cause" test used in most of our extradition conventions. However, a subsequent decision of the Swedish Supreme Court led experts of both governments to conclude that the problem lay not only in the standard of proof but also in the Swedish Supreme Court's practice of "looking behind" facially sufficient extradition requests. Our courts do not permit a fugitive to contradict the evidence submitted by the requesting country. Under the Swedish practice now applicable to extradition requests from the United States, on the other hand, a mini-trial is conducted in which our country labors under an inherent disadvantage. results from the fact that the United States relies on documentage. The disadvantage results from the fact that the United States relies on documentatary evidence while the fugitive often contradicts that evidence with live testimony which is not subject to cross examination. Under these circumstances it is not surprising that conflicts in the evidence would be resolved in favor of the fugitive and that the extradition request would, accordingly, be denied.

In light of the intervening decision of the Swedish Court mentioned above, the Department of State asked the Senate to defer consideration of the 1981 supplementary convention and the Department then negotiated a new supplementary convention to replace it. This new supplementary convention, submitted herewith, provides that a warrant of arrest, supported by evidence providing probable cause to believe the person sought committed the offense for which extradition is requested, "shall be recognized as sufficient grounds for extradition, unless, in a specific case, it appears that the warrant or decision of arrest is manifestly ill-founded" (Art. XI). This provision makes

it clear that a request supported by a prima facie showing of probable cause should, in the absence of other defects, be granted. The most noteworthy features of the remaining provisions of the supplementary convention are summarized below.

Article I has been amended to clarify the categories of persons subject to extradition; viz., those persons who are sought for prosecution, those who have been found guilty of committing an offense, or those who are wanted for the enforcement of a sentence.

Rather than listing specific offenses for which extradition may be granted, Article II follows the more modern practice of making an offense extraditable if it is punishable under the laws of both States by deprivation of liberty for at least two years or, in the case of sentenced offender, at least six months of the sentence remain to be served.

Article IV makes the convention applicable to offenses committed by nationals of the requesting country regardless of where committed, subject to the qualification that extradition may be refused for an offense committed within the territorial jurisdiction of the requested country, if that country submits the case for prosecution under its own laws.

Frequently, the subject of an extradition request is undergoing prosecution or is serving a sentence in the requested State. Article VI, a provision common to our most modern extradition treaties, permits the requested State either to temporarily surrender or to defer surrender of the fugitive.

Article VII requires the requested State, in the event it refuses an extradition request solely on the basis of nationality, to prosecute the person sought if asked to do so by the requesting State. This provision, which is similar to provisions contained in most of our recent treaties with civil law countries, is intended to provide de facto reciprocity to the U.S. and was framed in contemplation of the following differences between our legal systems. While most civil law countries are barred, either constitutionality or statutorily, from extraditing their nationals, such countries do have jurisdiction to prosecute their nationals for crimes committed abroad. The U.S., on the other hand, is ordinarily willing to extradite its nationals, at least in part because it generally does not have jurisdiction to prosecute them for crimes committed abroad.

Article XII, dealing with provisional arrest, has been amended to conform with recent U.S. extradition treaty practice.

Article XIII, setting forth the responsibilities of the requested State to provide legal advice and representation to the requesting State and apportioning the expenses of extradition between them, has been amended to conform to the practice developed under the existing convention.

In accordance with almost invariable United States practice, the supplementary convention will apply to offenses committed before as well as after its entry into force.

The supplementary convention will enter into force upon exchange of instruments of ratification.

The Department of Justice joins the Department of State in favoring approval of the supplementary convention at an early date.

Respectfully submitted,

GEORGE P. SHULTZ.

Supplementary Convention on Extradition Between the United States of America and the Kingdom of Sweden

The Government of the United States of America and the Government of the Kingdom of Sweden, desiring to make more effective the Extradition Convention signed at Washington October 24, 1961, have agreed upon the following amendments and additions to the convention:

ARTICLE I

Each Contracting State undertakes to surrender to the other, subject to the provisions and conditions laid down in this Convention, those persons found in its territory who are sought for the purpose of prosecution, who have been found guilty of committing an offense, or who are wanted for the enforcement of a sentence, in respect of any offense made extraditable under Article II of this Convention committed within the territorial jurisdiction of the other, or outside thereof under the conditions specified in Article IV of this Convention.

ARTICLE II

(1) An offense shall be an extraditable offense only if it is punishable under the laws of both Contracting States by deprivation of liberty for a period of at least two years. However, when the request for extradition relates to a person who has been convicted and sentenced, extradition shall be granted only if the duration of the penalty, or the aggregate of the penalties still to be served amounts to at least six months.

(2) For the purpose of this Article, it shall not matter—

(a) whether or not the laws of the Contracting States place the offense within the same category of offenses or denominate the offense by the same terminology; or

(b) whether or not the offense is one for which United States federal law requires proof of interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

(3) Subject to the conditions set out in paragraphs (1) and (2) of this Article, extradition shall also be granted for conspiring in, attempting, preparing for, or participating in, the commission of an offense.

(4) When extradition has been granted with respect to an extraditable offense, it shall also be granted with respect to any other offense specified in the extradition request that meets all other requirements for extradition except for periods of deprivation of liberty set forth in paragraph (1) of this Article.

ARTICLE III

Deleted.

ARTICLE IV

(1) Subject to the provisions of paragraph (2) of this Article, extradition shall be granted in respect of an extraditable offense committed outside the territorial jurisdiction of the requesting State if:

(a) the courts of the requested State would be competent to exercise jurisdiction in similar circumstances; or

(b) the person sought is a national of the requesting State.

(2) Extradition may be refused for an offense which has been committed within the territorial jurisdiction of the requested State, when that State takes all possible measures in accordance with its own laws to prosecute the person claimed.

(3) The words "territorial jurisdiction" as used in this Article and in Article I of this Convention mean: territory, including territorial waters, and the airspace thereover, belonging to or under the control of one of the Contracting States; and vessels and aircraft belonging to one of the Contracting States or to a citizen or corporation thereof when such vessel is on the high seas or such aircraft is over the high seas.

ARTICLE VI

If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the requested State for a different offense, the requested State may:

(a) defer the surrender of the person sought until the conclusion of the proceedings against that person, or the full execution of any punishment that may be or may have been imposed; or

(b) temporarily surrender the person sought to the requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody while in the requesting State and shall be returned to the requested State after the conclusion of the proceedings against that person in accordance with conditions to be determined by mutual agreement of the Contracting States.

ARTICLE VII

(1) There is no obligation upon the requested State to grant the extradition of a person who is a national of the requested State, but the executive authority of the requested State shall, subject to the appropriate laws of that State, have the power to surrender a national of that State if, in its discretion, it be deemed proper to do so.

(2) If the request for extradition is denied solely on the basis that the person claimed is a national of the requested State, that State shall, if asked to do so by the requesting State, take all possible measures in accordance with its own laws to prosecute the person claimed. If the requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State. The requesting State shall be informed of the result of its request.

ARTICLE XI

(1) The request for extradition shall be made through the diplomatic channel.

(2) The request for extradition shall be accompanied by:

(a) a statement as to the identity and probable location of the person sought;

(b) a statement of the facts of the case, including, if possible, the time and location of the crime;

(c) the provisions of the law describing the essential elements and the designation of the offense for which extradition is requested;

(d) the provisions of the law describing the punishment for the offense; and

(e) the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offense.

(3) A request for extradition relating to a person who is sought for prosecution also shall be accompanied by:

(a) evidence providing probable cause to believe that the person sought is the person to whom the warrant or decision of arrest refers;

(b) a certified copy of the warrant of arrest, issued by a judge or other competent judicial officer with respect to a request emanating from the United States, or a certified copy of the decision of arrest (häktningsbeslut) issued by a judge or other competent judicial officer with respect to a request emanating from Sweden, and such supplementary documentation as provides probable cause to believe that the person sought committed the offense for which extradition is requested. Such a warrant or decision of arrest and supplementary documentation shall be recognized as sufficient grounds for extradition, unless, in a specific case, it appears that the warrant or decision of arrest is manifestly ill-founded.

(4) In the case of a person who has been convicted of the offense, a request for extradition shall be accompanied by a duly certified or authenticated copy of the final sentence of the competent court. If the person was found guilty but not sentenced, the request shall be accompanied by a statement to that effect by the competent court. However, in exceptional cases, the requested State may request additional documentation.

(5) Documents transmitted through the diplomatic channel shall be admissible in extradition proceedings in the requested State without further certification, authentication or other legalization.

(6) The documents in support of the request for extradition shall be accompanied by a duly certified translation thereof into the language of the requested State.

ARTICLE XII

(1) In case of urgency, either Contracting State may request the provisional arrest of any accused or convicted person. Application for provisional arrest shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry for Foreign Affairs in Sweden, in which case the facilities of Interpol may be used.

(2) The application shall contain: a description of the person sought; the location of that person, if known; a brief statement of

the facts of the case including, if possible, the time and location of the offense; a statement of the existence of a warrant or decision of arrest or a judgment of conviction against that person, as referred to in Article XI; and a statement that a request for extradition of the person sought will follow.

(3) On receipt of such an application, the requested State shall take the appropriate steps to secure the arrest of the person sought. The requesting State shall be promptly notified of the result of its application.

(4) Provisional arrest shall be terminated if, within a period of 40 days after the apprehensi n of the person sought, the Executive Authority of the requested State has not received the formal request for extradition and the supporting documents required by Article XI.

(5) The termination of provisional arrest pursuant to paragraph (4) of this Article shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article XI are delivered at a later date.

ARTICLE XIII

(1) The requested State shall provide review of documentation in support of an extradition request for its legal sufficiency prior to presentation to the judicial authorities and shall provide for representation of the interests of the requesting State before the competent authorities of the requested State.

(2) Expenses related to the translation of documents and to the transportation of the person sought shall be paid by the requesting State. No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Convention or arising out of the representation of the interests of the requesting State before the competent authorities of the requested State, shall be made by the requested State against the requesting State.

This supplementary Convention shall apply to offenses encompassed by Article II committed before as well as after its entry into force.

Article XVI of the Convention of October 24, 1961, shall also apply to the entry into force and the termination of this supplementary Convention.

In witness whereof, the respective plenipotentiaries have signed this supplementary Convention and have affixed hereunto their seals.

Done at Stockholm in duplicate, in the English and Swedish languages, both versions being equally authentic, this March 14, 1983.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Franklin S Forsberg

FOR THE GOVERNMENT OF THE KINGDOM OF SWEDEN

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